IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1446 of 1996

with

SPECIAL CIVIL APPLICATION No 1699 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JYOTI LIMITED

Versus

MH PADHIYAR

Appearance:

1. Special Civil Application No. 1446 of 1996
   M/S TRIVEDI & GUPTA for Petitioner
   MR RD RAWAL for Respondent
2. Special Civil Application No. 1699 of 1996
   MR RD RAWAL for Petitioner
   M/S TRIVEDI & GUPTA for Respondent

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/01/2005

ORAL JUDGEMENT

#. In both these petitions, the Award passed by the Labour Court, Baroda, in Reference (LCB) No.655 of 1986 dated 28.11.1995 is challenged by the employer as well as workman. The Labour Court has granted reinstatement with continuity of service and has denied backwages of interim period. The employer has challenged the direction of reinstatement and workman has challenged denial of backwages for interim period.

#. Learned advocate Mr.Thaker appears for M/s.Jyoti Limited and learned advocate Mr.R.D.Rawal appears for workman. Mr.Thaker submits that once legality and validity of departmental inquiry has not been challenged and purshis to that effect has been filed by workman before the Labour Court, then it amount acceptance of findings recorded in the inquiry and the Labour Court has consider the question of punishment. He further submitted that the Labour Court has rejected the contention of the workman that he was a trade unionist, leader and protected workman. Mr.Thaker also submitted that in past also, similar misconducts were committed by the workman and only on the ground that punishment is disproportionate, the Labour Court granted reinstatement with continuity of service. He submitted that the Company lost confidence on the workman as he was habitually committing misconducts while working with the company. Therefore, according to him, Labour Court has committed gross error in granting reinstatement in favour of workman. Mr.Thaker also vehemently submits that there was no justification in granting reinstatement by the Labour Court as the Labour Court has not given any reason in support of granting relief of reinstatement.

#. As against this, Mr.Rawal, learned counsel appearing for the workman, submitted that the Labour Court has committed gross error in denying total backwages for interim period by way of punishment and therefore, it is harsh to deny total backwages to the workman when misconduct is minor in nature. He also submitted that merely admitting legality and validity of inquiry does not amount to accepting findings given by the inquiry officer, therefore, the Labour Court has committed gross error in deciding the Reference while accepting the findings which were challenged by the workman before the Labour Court. He also submitted that in detail, written submissions were made before the Labour Court but the

same have not been properly dealt with by the Labour Court, therefore, according to him, denial of total backwages of interim period is a gross error committed by the Labour Court which requires interference by this Court. He also again emphasized that there was no past record of the workman which required extreme penalty of dismissal.

#. I have considered the submissions made by both the learned advocates. I have also perused the relevant papers produced by the petitioner-Company as well as respondent-workman alongwith award in question. It is not disputed by the workman that on 13.10.1984, the respondent-workman was found sleeping while working with the company. There is no challenge in the award by the workman to this extent. The workman filed statement of claim and employer filed written statement before the Labour Court. On 18.1.1993, the workman filed purshis under section 11A of the Industrial Disputes Act, 1947. In the said purshis, the workman has declared that he does not want to challenge the legality or otherwise of the proceedings of departmental inquiry and he does not press the same and that the reference be tried on merits as per section 11A of the Act. Thereafter, the Labour Court has examined the matter on merits while exercising powers under section 11A of the Act. The relevant discussion is in paragraph 7 of the Award. The Labour Court has come to the conclusion that in the third shift, similar kind of misconduct was committed and several notices were served to the workman. Therefore, the workman was habitual in committing such misconducts. The Labour Court has also come to the conclusion that it amounts to loss of confidence by the employer, however, punishment of dismissal is disproportionate to the misconduct committed by the workman. The Labour Court has also come to the conclusion that after the dismissal, workman was gainfully employed as per evidence given by the workman vide ex.18. The Labour Court has considered one decision of the Bombay High Court and passed the award observing that the facts of the Bombay High Court case and the present case are similar in nature and therefore, reinstatement deserves to be granted with continuity of service and without backwages for interim period. Further, the Labour Court observed in paragraph 8 that the moment the purshis has been submitted by the workman not to challenge the departmental inquiry, it amounts to accepting the findings given by the employer and court has to consider only question of punishment. These are the observations made by the Labour Court on the basis of evidence.

#. I have considered the submissions made by both the learned advocates for the parties. Learned advocate Mr.Thaker has raised contention that in a given case where serious misconduct has been committed by the workman then in such case reinstate should not be granted by the Labour Court. Learned advocate Mr.Rawal has relied upon the decision of the Apex Court in the case of Colour-chem Limited v. A.L.Alaspurkar and others reported in 1998 LAB I.C. 974 where the Apex court has considered that if workman is found sleeping in night shift in the plant while keeping the machine in running condition without inserting raw material therein, imposition of punishment of dismissal would be disproportionate and amounts to unfair labour practice being legal victimization. In view of the above decision, the contention raised by Mr.Thaker cannot be accepted because in similar circumstances, where the workman was found sleeping during night shift, the punishment of dismissal is considered to be disproportionate and legal victimization by the Apex Court. Relevant paragraph is 11 which reads thus:

"11. However this is not the end of the matter. Looking to the nature of the charges levelled against the delinquent-respondents it has to be appreciated that all that was alleged them was that they were found sleeping in the wee hours of the night shift almost near dawn at 03:30 a.m. having kept the machine in a running condition without seeing to it that proper raw material was inserted therein. Even on the basis that it was a major misconduct which was alleged and proved, looking to the past record of the service of the delinquents no reasonable employer could have imposed punishment of dismissal. The past record was to the effect that respondent No.3 was once found allegedly gambling in the factory premises but was in fact found to be playing cards on a Diwali day which was a public holiday, wile the only past misconduct alleged against respondent No.4 was that on one occasion he was warned for negligent discharge of duty. Looking to the nature of the charges levelled against them, therefore, and even in the light of their past service record it could not be said that for such misconducts they were liable to be dismissed from service. Such punishments patently appear to be grossly disproportionate to the nature of the charges held proved against them. That finding reached by the Labour Court on facts remains unassailable. Once that

conclusion is reached even apart from non application of cl.(g) of Item 1 of Schedule IV of the Act. Clause (a) of Item 1 of the said Schedule of the Act gets squarely attracted as it would amount to victimization on the part of the management which can be said to have imposed a most unreasonable punishment on these employees. In this connection learned senior counsel for the respondent-workman has rightly pressed in service a decision of a Bench of three learned Judges of this court in the case of Hind Construction (AIR 1965 SC 917) (supra). In that case this Court was considering the jurisdiction and power of the Industrial Court during the time when S.11-A of the Industrial Disputes Act, 1947 was not on the Statute Book. Considering the nature of the punishment imposed on the workmen, who had gone on strike, because they had not reported for duty on a day which otherwise was a holiday but which was declared by the management to be a working day, this Court speaking through Hidaytullah, J., made the following pertinent observations at page 88 (of SCR) : (at p.919 of AIR) of the Report:

"But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization of unfair labour practice..."

It has to be kept in view that these observations were made by this Court at a time when unfair labour practices were not codified either by the Industrial Disputes Act or even by the present Act. The present Act tried to codify unfair labour practices on the part of the employer by enacting the Act in 1972 and even the Industrial Disputes Act being the Central Act also followed the Maharashtra Act and taking a leaf from the book of Maharashtra Legislature, Parliament introduced the concept of unfair labour practices by inserting Chapter V-C by Act No.46 of 1982 w.e.f. 21st August, 1984. Sections 25-T and 25-U of the Industrial Disputes Act deal with "Prohibition of unfair labour practices" and "Penalty for committing unfair labour practices" respectively. The term "unfair labour practice"

> was defined by the Industrial Disputes Act by inserting Section 2(ra) with effect from the very same date i.e. 21st August, 1984 by the very same Act, i.e. Act No.46 of 1982 to mean, "any of the practices specified in the Fifth Schedule". The Fifth Schedule of the Industrial Disputes Act, which say the light of the day pursuant to the very same Amending Act, deals with "unfair labour practices" which are a mirror image and a replica of the unfair labour practices contemplated and codified by the present Maharashtra Act. But apart from these subsequent statutory provisions which tried to codify unfair labour practices on the part of the employers, the basic concept of victimisation as laid down by this Court in Hind Construction's case (AIR 1965 SC 917) (supra) holds the field and is not whittled down by any subsequent statutory enactments. Not only it is not given a go-by but it is reiterated by the present Act by enacting clause (a) of Item 1 of Schedule IV of the Act meaning thereby any discharge or dismissal of any employee by way of victimisation would be unfair labour practice."

The contention raised by Mr.Rawal appearing for the workman is that denial of total backwages for interim period by way of punishment is harsh and Labour Court has committed gross error because workman has not admitted total amount received by him as a gainful employment but in fact workman has not admitted gainful employment and only admitted some miscellaneous work carried out by him to the tune of Rs.400/= per month only. Therefore, the Labour Court should have granted some part of backwages if that part has been taken into account as gainful employment. Contention raised by Mr.Rawal cannot be accepted simply on the ground that the Labour Court has denied the backwages not on the factum of the workman being in gainful employment. The Labour Court has denied backwages on the ground of punishment for the misconduct committed by him. Therefore, while exercising power under section 11A of the Act, the Labour Court has also power to pass appropriate orders on certain conditions if the Labour Court is satisfied that punishment is disproportionate, harsh and unjustified. In the facts of this case, the Labour Court has come to the conclusion that punishment of dismissal for such misconduct is harsh and unjustified and therefore, granted reinstatement with condition to deny backwages as punishment. That aspect has been examined by the Apex Court in the case of Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan

Ltd. and another reported in AIR 1984 SC 976. Paragraph-3 of this decision is relevant which is quoted as under:

"3. Wide discretion is vested in the Tribunal under this provision and in a given case on the facts established the Tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages. In our opinion the High Court was right in taking the view that when payment of back wages either in full or part is withheld it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages, and, therefore, did not constitute penalty."

In view of the observations made by the Apex Court as aforesaid, Labour Court is having power to deny backwages by way of punishment and Labour Court has rightly denied the same looking to the facts of the case. The reason is that earlier similar kind of misconducts were committed by the workman and for that certain warning notices were given to the workman and some extent of gainful employment is also admitted by workman in his evidence vide ex.18 and remaining part has been considered to be punishment to the workman because while exercising power under section 11A of the Act, it is discretionary power for the Labour Court to pass such order in the facts of the case. It is the clear language of section 11A and it is provided therein that where the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the

circumstances of the case may require. Therefore, this section itself suggests that while exercising power under section 11A of the Act, the workman will not get full relief like reinstatement with continuity of service with full backwages for interim period. That power itself suggests that some punishment can be imposed by the Labour Court while granting some relief in favour of the workman. Therefore, considering the facts of the present case, that the workman had completed 30 years' service, and some similar kind of misconducts were committed by him, and considering his evidence, the Labour Court has rightly granted relief of reinstatement and not granted backwages by way of punishment for which the Labour Court has jurisdiction under section 11A of the Act and for that, the Labour Court has not committed any error while passing such Award. Learned counsel for the parties are unable to point out any infirmity or any error in the award passed by the Labour Court which requires any interference by this Court while exercising powers under Article 227 of the Constitution. Hence, according to my opinion, there is no substance in either of the petition and therefore, both the petitions are dismissed. Rule discharged. Interim relief, if any, granted earlier and continued till date, shall stand vacated in Special Civil Application No.1446 of 1996. No order as to costs.

#. It is made clear that the workman shall be entitled for all the benefits flowing from the award in question till the date of retirement from the Company, including retirementary benefits as per the service rules. It is also hoped that the Company will pay all the due amount as per the award in question and other retirementary benefits to the workman within a period of three months as the workman has already crossed the age of 65.

(H.K.RATHOD, J.)

(sunil)